DENISE T. REED	*	**NO. 2018-CA-0078**
VERSUS	*	
		COURT OF APPEAL
WESLEY E. HAWLEY	*	
		FOURTH CIRCUIT
	*	
		STATE OF LOUISIANA

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APPEAL FROM
CIVIL DISTRICT COURT, ORLEANS PARISH
NO. 2015-00989, DIVISION "E"
Honorable Clare Jupiter, Judge
* * * * * *

JAMES F. MCKAY III
CHIEF JUDGE
* * * * * *

(Court composed of Chief Judge James F. McKay III, Judge Edwin A. Lombard, Judge Rosemary Ledet)

LOMBARD, J., DISSENTS WITH REASONS

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AFFIRMED

AUGUST 1, 2018

In this case (which includes tortious elements, breach of contract and donation law claims), involving the alleged conversion of a thoroughbred racehorse, the trial court ruled in favor of the defendant, Wesley E. Hawley, and against the plaintiff, Denise T. Reed.[1] [2] For the reasons that follow, we affirm the judgment of the trial court.

FACTS AND PROCEDURAL HISTORY

In January of 2013, Wesley Erik Hawley met Denise T. Reed and the two became romantically involved in March of 2013 and eventually were engaged to be married. Mr. Hawley was a widower and a thoroughbred horse trainer/owner with over twenty years experience.

On September 4, 2013, Mr. Hawley attended a thoroughbred horse sale through Equine Sales Company, in Opelousas, Louisiana, where he purchased a filly named "Clever Sue" for $4,000.00. In April of 2014, Mr. Hawley placed Ms.

[1] Although a jurisdictional issue is arguably raised as the judgment does not specify what relief is granted (i.e., that it does not dismiss the claims), we believe this can be overcome as there are only two parties and it is clear what relief each is seeking. *See* La. C.C.P. art. 1841; Tomlinson v. Landmark Am. Ins., Co., 2015-0276, p. 2 (La.App. 4 Cir. 3/23/16), 192 So.3d 153, 156.
[2] The trial court also ruled on a reconventional demand, which is not at issue in this appeal.

Reed's name as the owner on the horse's registration papers, which had been mailed to him as the buyer/owner.

In September of 2014, the couple ended their relationship and called off the wedding. Thereafter, on September 25, 2014, Mr. Hawley signed Ms. Reed's name on the ownership papers, transferring the paper title back to himself. At this point, Clever Sue had never run a race and the expenses for her maintenance were already over $20,000.00. Since that time, the horse has run several races and has won some prize money. All costs of purchasing and maintaining the horse have been paid solely by Mr. Hawley.

Ms. Reed filed an original and supplemental petition under theories of conversion, fraud, breach of contract and negligence *per se,* due to Mr. Hawley's alleged forgery of her signature on the official registration papers for a thoroughbred racehorse. She contended that she was the owner of the racehorse at all pertinent times. She sought damages in the amount of the purse money earned by the horse. She also sought damages for inconvenience. Mr. Hawley filed a reconventional demand against Ms. Reed, seeking the return of an engagement ring, a trophy and pictures.

A trial on the merits took place on June 19 and 20, 2017. At the conclusion of trial, the court ruled in Mr. Hawley's favor on Ms. Reed's claims relating to ownership of the racehorse and right to purse money. The court ruled in Ms. Reed's favor with regard to Mr. Hawley's reconventional demand. The court signed a judgment on July 11, 2017. On July 17, 2017, Ms. Reed filed a motion

for new trial, which was denied on October 26, 2017. Ms. Reed now appeals the trial court's judgment.

DISCUSSION

On appeal, Ms. Reed raises the following assignments of error: 1) the trial court erred by finding that Mr. Hawley owned the filly at any time; 2) the trial court committed a legal error when it applied the manual delivery rule of La. C.C. art. 1543 to incorporeal movables – ownership and Jockey Club certificate – and by failing to follow Supreme Court of Louisiana precedent; 3) the trial court erred by making factual findings which do not have evidentiary support in the record; 4) the trial court committed a second legal error when it equated possession of the filly with ownership; and 5) the trial court erred in ruling that Ms. Reed was not the legal owner of the filly when she ran her two races.

In the instant case, it is undisputed that Mr. Hawley purchased the horse on September 4, 2014 with his own funds, paid all of its bills, and cared for the horse throughout its racing career. There can be no dispute that Mr. Hawley owned the filly until he put Ms. Reed's name on the papers in April of the following year, approximately seven months after he purchased the horse. The question to be answered is whether Mr. Hawley ever transferred ownership of the horse to Ms. Reed.

Property can neither be acquired nor disposed of gratuitously except by donations inter vivos or mortis causa, made in one of the forms hereafter established. La. C.C. art. 1467. A donation inter vivos is a contract by which a

person, called the donor, gratuitously divests himself, at present and irrevocably, of the thing given in favor of another, called the donee, who accepts it. La. C.C. art. 1468. Donations inter vivos of corporeal and incorporeal things generally must be by authentic act, except if the manual gift of a corporeal moveable is accompanied by actual delivery. Arnold v. Fenno, 94-1658 (La.App. 4 Cir. 3/16/95), 652 So.2d 1078. In order for an inter vivos donation to be valid, there must be a divestment, accompanied by donative intent; donative intent is an issue of fact. Schindler v. Biggs, 2006-0649 (La.App. 1 Cir. 6/8/07), 964 So.2d 1049. The burden of proving a donation is on the donee, and the proof must be strong and convincing. In re Succession of Jones, 43,365, 43,366 (La.App. Cir. 2 6/4/08), 986 So.2d 809.

In the instant case, Ms. Reed filed a lawsuit against Mr. Hawley, seeking to establish her ownership of the racehorse, Clever Sue. Therefore, as the alleged donee of the horse, the burden of proof is on Ms. Reed. The testimony at trial established that Mr. Hawley and Ms. Reed were involved in a romantic relationship from March of 2017 until sometime in September of 2014. In fact, the couple eventually became engaged to be married, before calling off their wedding in September of 2014. Although Mr. Hawley purchased Clever Sue on September 4, 2013, it was not until April of 2014 that he placed Ms. Reed's name as the owner on the horse's registration papers, which had been mailed to him. At trial, Mr. Hawley testified that this was done to woo Ms. Reed and in anticipation of their marriage and was not intended to transfer ownership of the horse.

As stated above, property can neither be acquired nor disposed of gratuitously except by donation inter vivos or mortis causa. *See* La. C.C. art. 1467. Because Mr. Hawley and Ms. Reed are both living, we are dealing with a donation inter vivos. Donations inter vivos of corporeal things must be by authentic act, unless it is a manual gift of a corporeal movable accompanied by actual delivery of the property. In the instant case, it is clear that Mr, Hawley was the owner of Clever Sue when he purchased her on September 4, 2013. There was no authentic act whereby Mr. Hawley donated his ownership interest in Clever Sue to Ms. Reed. There is also no evidence in the record that Mr. Hawley ever gave Clever Sue to Ms. Reed as a manual gift; he has always retained custody and possession of the horse and paid all her expenses. Based on the record before this Court, it would be impossible for Ms. Reed to carry the strong and convincing burden of proving that Mr. Hawley gave the racehorse to her. Accordingly, we find no error in the trial court's judgment.

CONCLUSION

For the above and foregoing reasons, we affirm the trial court's judgment in favor of Mr. Hawley and against Ms. Reed.

AFFIRMED